IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CHARLES M. HUGHES,	)	
	)	
Plaintiff,	)	Civil Action No.: 7:04CV00450
	)	
v.	)	**MEMORANDUM OPINION**
	)	By: Hon. Glen E. Conrad
PRUDENTIAL LIFE INSURANCE COMPANY OF AMERICA,	)	United States District Judge
	)	
Defendant.	)	

Charles M. Hughes brings this action pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461. The plaintiff alleges that he is totally and permanently disabled as a result of anxiety and depression, and that the defendant, Prudential Life Insurance Company of America (Prudential), improperly denied his claim for disability benefits. Both parties have moved for summary judgment. For the following reasons, the plaintiff's motion will be granted, and the defendant's motion will be denied.

I.

The plaintiff was employed by Celanese Acetate (Celanese) for thirty-seven years. The plaintiff began working for Celanese on June 14, 1963, and he last worked for the company on June 19, 2000. (R. at 274). As a Celanese employee, the plaintiff was provided term life insurance through a group plan issued by Prudential. (R. at 274, 232). Pursuant to the insurance plan, an employee is eligible to receive benefits if he becomes "totally and permanently disabled, either physically or mentally, from any cause whatsoever" while under the age of sixty. (R. at 232). In order to be considered "totally and permanently disabled," the employee has to provide "due proof" that he is "wholly, continuously and permanently unable to engage in any

occupation or perform any work for any kind of compensation of financial value during the remainder of his lifetime." (R. at 232).

The administrative record indicates that on June 8, 2000, the plaintiff was involved in an incident of "horseplay" at work. (R. at 57). After the incident was investigated, the plaintiff was suspended from work for two weeks without pay, and he was required to sign a statement acknowledging that any further infractions of the rules would result in his immediate termination. (R. at 58). Although the plaintiff was supposed to return to work on July 11, 2000, he did not ever return from his suspension. (R. at 274).

On July 11, 2000, the plaintiff was examined by his primary care physician, Dr. Scott Hayes. (R. at 34). The plaintiff explained the work incident to Dr. Hayes and reported that he was nervous about returning to work. (R. at 34). He also complained of chest discomfort. (R. at 34). Dr. Hayes noted that the plaintiff might need to consider medication if his anxiety continued. (R. at 34). The plaintiff returned to Dr. Hayes on July 20, 2000 and reported that he continued to suffer from nervousness, agitation, and chest pain. (R. at 35). The plaintiff also reported having crying spells and difficulty sleeping. (R. at 35). Dr. Hayes determined that the plaintiff was probably suffering from depression. (R. at 35). The doctor prescribed Xanax and Celexa for the plaintiff, and he placed the plaintiff on medical leave. (R. at 35, 58).

Dr. Hayes referred the plaintiff to a psychiatrist, Dr. Robert Murdock. (R. at 57). Dr. Murdock performed an intake evaluation on August 11, 2000. (R. at 57). During the evaluation, the plaintiff reported "the acute onset of marked depression and anxiety," which was associated with tearfulness, irritability, social withdrawal, apathy, lethargy, impaired memory and concentration, and "a few instances of nonspecific suicidal ideation." (R. at 57). The plaintiff also reported that he suffered from an episode of depression and anxiety approximately fifteen

years earlier, which lasted for several months. (R. at 57). The plaintiff acknowledged that he was apprehensive about returning to work. (R. at 57-58). Dr. Murdock diagnosed the plaintiff with "major depressive episode, recurrent, moderate" and generalized anxiety disorder. (R. at 58). The doctor advised the plaintiff to continue taking Celexa and Xanax, and he added an additional prescription for Remeron. (R. at 59). Following an examination on August 29, 2000, Dr. Murdock noted that the plaintiff remained depressed and agitated, and that he feared returning to work. (R. at 56). Dr. Murdock extended the plaintiff's medical leave through the remainder of the calendar year, and noted that he suspected that the plaintiff would never be able to return to work. (R. at 56).

The plaintiff saw Dr. Hayes again on October 16, 2000. (R. at 36). Dr. Hayes' examination notes indicate that the plaintiff was still having a great deal of difficulty with depression. (R. at 36). Although the plaintiff reported some improvement in his anxiety during a follow-up appointment with Dr. Murdock on November 21, 2000, Dr. Murdock noted that the plaintiff continued to struggle with some persistent degree of depression and anxiety. (R. at 54).

The plaintiff filed a claim for disability benefits with Prudential on December 8, 2000, along with an attending physician's statement from Dr. Murdock. (R. at 274, 283). Dr. Murdock indicated that the plaintiff had to stop working as a result of acute depression and anxiety. (R. at 283). In response to a question regarding whether the plaintiff had ever suffered from a similar condition, Dr. Murdock noted the plaintiff's previous bout with depression. (R. at 283). Since the plaintiff was able to recover from depression in the past, Prudential denied the plaintiff's claim for benefits on December 27, 2000. (R. at 257).

On January 16, 2001, the plaintiff had a follow-up appointment with Dr. Hayes. Dr. Hayes opined that the plaintiff appeared to have "good reasons for total disability." (R. 37).

Likewise, in an attending physician's statement completed on January 29, 2001, Dr. Hayes indicated that it appeared that the plaintiff was "totally and permanently disabled." (R. at 45-46).

The plaintiff was also treated by Rhoda Janosik, a licensed clinical social worker. (R. at 255). In a January 26, 2001 letter to Prudential, Ms. Janosik indicated that the severity of the plaintiff's depression had changed very little during his course of treatment. (R. at 255). Ms. Janosik opined that "[i]t is doubtful that Mr. Hughes will be able to return to his job. It is also unlikely that he would be able to move to another job; or train for another job in the foreseeable future." (R. at 255). She explained that "[Mr. Hughes'] age, the fact there is a family history of depression, prolonged stress, and only minimum improvement in the intensity of his depression despite medication and therapeutic intervention, indicate a poorer prognosis of recovery." (R. at 255).

The plaintiff appealed Prudential's decision to deny his claim for benefits, and on March 19, 2001, Prudential issued a letter upholding its initial decision. (R. at 235-236). Despite receiving additional information from Dr. Hayes and Ms. Janosik, Prudential determined that the plaintiff's file did not support a finding of total and permanent disability. (R. at 236). Once again, Prudential emphasized that the plaintiff was able to recover from depression in the past. (R. at 236).

On March 17, 2001, the plaintiff was awarded disability insurance benefits from the Social Security Administration. (R. at 177). The Administration determined that the plaintiff became disabled on July 20, 2000. (R. at 177).

After examining the plaintiff on multiple occasions in 2001, Dr. Murdock wrote a letter to Prudential on December 18, 2001. (R. at 47). The doctor reported as follows:

> Despite concerted treatment efforts and the fact that he has not had to work for over a year, Mr. Hughes continues to display residual symptoms of critical

> depression and anxiety such that I do not believe that he can tolerate stress, sustain his concentration or maintain his work effort sufficient to be employed on even a part-time basis; nor do I believe this is likely to change for the indefinite future.

(R. at 47).

Dr. Murdock's letter was submitted to Prudential as part of the plaintiff's second appeal. (R. at 178). On January 3, 2002, Prudential notified the plaintiff that the company had decided to uphold its decision to deny the plaintiff's claim for benefits. (R. at 179). Even though the medical evidence showed that the plaintiff continued to suffer from depression, Prudential was unable to conclude that the plaintiff could not return to work for the remainder of his lifetime. (R. at 179).

Dr. Hayes completed another attending physician's statement for Prudential on February 28, 2002. (R. at 43, 44). Dr. Hayes indicated that the plaintiff continued to suffer from depression and anxiety, and that the plaintiff had not made any significant progress. (R. at 43, 44). Dr. Hayes opined that the plaintiff was "totally and permanently disabled," and that he was "unable to perform any work." (R. at 44).

On May 22, 2002, Dr. Gino Grosso reviewed the plaintiff's medical records at the request of Prudential. (R. at 12). Based on his review of the records,[1] Dr. Grosso diagnosed the plaintiff with an episode of recurrent, major depression. (R. at 16). The doctor emphasized the array of treatment options available for the plaintiff's conditions and ultimately determined that there was no clinical basis to conclude that the plaintiff could not return to work. (R. at 18). Dr. Russo opined that the "possibility of any of [the plaintiff's conditions] remaining at a severe, functionally impairing level for a lifetime in the presence of one or more psychotherapeutic and pharmacologic treatments is extremely remote." (R. at 18).

[1] Dr. Grosso did not actually examine or interview the plaintiff. (R. at 12).

Prudential completed its final review of the plaintiff's claim for disability benefits in June 2002. (R. at 126, 127). Upon examining all of the information in the plaintiff's file, as well as Dr. Grosso's evaluation of the plaintiff's records, Prudential determined that there was "no medical evidence" to support the conclusion that the plaintiff was unable to work for the remainder of his lifetime. (R. at 127).

The administrative record also includes a letter that Dr. Murdock sent to the plaintiff on August 14, 2003, after Prudential had issued its final decision. (R. at 9). Dr. Murdock explained that he "would not use the phrase 'totally and permanently disabled' for any patient with a psychiatric diagnosis (especially a mood or anxiety disorder) as it is impossible to rule out a significant improvement in such diagnoses sometime in the future." (R. at 9). Nevertheless, Dr. Murdock reemphasized that the plaintiff's psychiatric condition rendered him disabled for the "indefinite future." (R. at 9).

II.

Having exhausted his administrative remedies, the plaintiff filed this action against Prudential on August 10, 2004. The plaintiff challenges Prudential's decision to deny his claim for disability benefits. Both parties have moved for summary judgment.

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is properly granted if "there is no genuine issue as to any material fact and the … moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). For a party's evidence to raise a genuine issue of material fact to avoid summary judgment, it must be "such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In determining whether to grant a motion for summary judgment, the court must view the record in the light most favorable to the non-moving party. Terry's Floor Fashions, Inc. v.

Burlington Indust., Inc., 763 F.2d 604, 610 (4th Cir. 1985).

III.

When reviewing a clamaint's denial of benefits under ERISA, the court must engage in a two-part inquiry. First, the court must determine the appropriate standard of review. Then, the court must apply the standard to the facts of the case, in order to decide whether the denial of benefits should be upheld.

A.

To determine the appropriate standard of review, the court must decide whether the language of the insurance plan grants the plan administrator discretion to determine the claimant's eligibility for benefits. Feder v. Paul Revere Life Ins. Co., 228 F.3d 518, 522 (4th Cir. 2000). If the plan confers discretion, the court reviews the decision to deny benefits for abuse of discretion. Id. If the plan does not clearly grant discretion, the standard of review is de novo. Id. at 524. Although a plan does not have to include any specific phrases or terms to preclude a de novo standard, "the plan's intention to confer discretion on the plan administrator or fiduciary … must be clear." Gallagher v. Reliance Standard Life Ins. Co., 305 F.3d 264, 268 (4th Cir. 2002).

In this case, Prudential acknowledges that the insurance plan issued to the plaintiff does not expressly grant the insurance company discretion to determine the plaintiff's eligibility for benefits. Nonetheless, Prudential argues that the court should apply an abuse of discretion standard, because the plan conveys the intention to delegate final authority to the insurance company. To support its argument, Prudential focuses on the fact that the plan requires claimants to provide "due proof" of a total and permanent disability.

In Gallagher, the United States Court of Appeals for the Fourth Circuit addressed similar plan language. Id. at 269. Rather than requiring "due proof" of a total and permanent disability, the plan at issue in Gallagher provided that a benefit would be paid if the claimant submitted "satisfactory proof of Total Disability to us." Id. The Fourth Circuit ultimately concluded that the language did not clearly and unambiguously grant discretion to the plan administrator, since it was susceptible to two interpretations. Id. The court emphasized that the language could be interpreted as requiring the claimant to submit objectively satisfactory proof of a disability, or the language could be interpreted as requiring proof that was subjectively satisfactory to the plan administrator. Id.

Based on the Fourth Circuit's reasoning in Gallagher, the court concludes that the language used in Prudential's plan does not clearly and unambiguously confer discretion to the plan administrator to determine the plaintiff's eligibility for benefits, and that the proper standard of review is de novo.[2] Therefore, the court must consider the issue of whether the plaintiff is entitled to disability benefits "as if it had not been decided previously." United States v. George, 971 F.2d 1113, 1118 (4th Cir. 1992).

B.

Having reviewed the plaintiff's claim for disability benefits de novo, the court concludes that Prudential improperly denied the plaintiff's claim. The plaintiff provided sufficient evidence to establish that he suffers from depression and anxiety. The plaintiff also provided sufficient evidence to establish that his depression and anxiety render him totally and permanently disabled. This evidence includes written opinions from his primary care physician, Dr. Hayes, as well as his treating psychiatrist, Dr. Murdock. Both Dr. Hayes and Dr. Murdock examined the

[2] The court notes that even if it was to review Prudential's denial for an abuse of discretion, the court would still conclude that Prudential improperly denied the plaintiff's claim for benefits.

plaintiff on multiple occasions over an extended period of time. In an attending physician's statement dated January 29, 2001, Dr. Hayes indicated that the plaintiff's depression and anxiety had not made any significant improvement, and that it appeared that the plaintiff was "totally and permanently disabled." (R. at 46). Likewise, on February 28, 2002, Dr. Hayes reported to Prudential that the plaintiff was "totally and permanently disabled," and that he was "unable to perform any work." (R. at 44). Dr. Hayes' statements are consistent with the October 18, 2001 letter from Dr. Murdock, in which he opined that the plaintiff was unable to work on even a part-time basis, despite concerted treatment efforts, and that the plaintiff's condition was unlikely to change in the indefinite future. (R. at 47). The court notes that the plaintiff's therapist, Rhoda Janosik, also reported that the plaintiff's depression changed very little over his course of treatment, and that the plaintiff would not likely be able to work in the foreseeable future. (R. at 255). She noted a genetic component underlying his psychiatric condition. (R. at 255).

Despite receiving the opinions of the plaintiff's primary care physician, psychiatrist, and therapist, Prudential repeatedly denied the plaintiff's claim for disability benefits without addressing these opinions. While the court acknowledges that it cannot require plan administrators to automatically accord special weight to the opinions of a claimant's treating physicians, plan administrators "may not arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of a treating physician." Black & Decker Disability Plan v. Nord, 538 U.S. 822, 833 (2003).

Prudential ultimately relied upon Dr. Grosso's evaluation to deny the plaintiff's claim. Since Dr. Grosso did not actually examine the plaintiff or perform any type of clinical interview, the court does not find Dr. Grosso's evaluation to be persuasive. The court notes that Prudential could have asked the plaintiff to submit to an independent medical examination. Although

independent examinations are not required, "[t]hey can prove especially significant in cases in which the plan administrator is operating under a conflict of interest or rejects a treating doctor's opinion." Laser v. Provident Life & Accident Ins. Co., 211 F. Supp. 2d 645, 650-651 (D. Md. 2002). See also Case v. Continental Casualty Co., 289 F. Supp. 2d 732, 739-740 (E.D. Va. 2003) (noting that a disinterested decision maker would not have discounted the opinions of the plaintiff's treating physicians without seeking an independent examination of the plaintiff).

During the hearing on the parties' motions for summary judgment, counsel for Prudential suggested that no claimant will ever be considered totally and permanently disabled on the basis of depression, since it is impossible to determine whether a claimant's depression will significantly improve in the future.[3] While depression may be successfully treated in many cases, this can also be said for other physical and psychological impairments. The court notes that if the plaintiff's depression does ultimately improve, the insurance plan provides an appropriate remedy. Pursuant to the plan, Prudential has the right to require proof that a disability continues to be permanent rather than temporary, as well as the right to discontinue disability benefits if such proof is not furnished. (R. at 231).

IV.

For the reasons stated, the court concludes that the plaintiff provided "due proof" of a total and permanent disability, and that Prudential improperly denied the plaintiff's claim for

[3] Prudential places great emphasis on the August 2003 letter from Dr. Murdock, in which he explained to the plaintiff that he "would not use the phrase 'totally and permanently disabled' for any patient with a psychiatric diagnosis … as it is impossible to rule out a significant improvement in such diagnoses sometime in the future." (R. at 9). However, a copy of this letter was not submitted to Prudential until after the insurance company issued its final decision. Courts conducting a de novo review of ERISA benefits claims should generally consider only the evidentiary record that was presented to the plan administrator. Quesinberry v. Life Insurance Co. of North America, 987 F.2d 1017, 1025 (4th Cir. 1993). Since the circumstances of this case do not "clearly establish that additional evidence is necessary to conduct an adequate de novo review of the benefit decision," the court has limited its review to the information that was before Prudential during its decision making process. Id. In any event, Dr. Murdock's most recent letter is not inconsistent with his earlier observation that the plaintiff is disabled, and that this is not "… likely to change for the indefinite future." (R. at 47).

disability benefits. Having determined that the plaintiff is entitled to benefits, the plaintiff's motion for summary judgment is granted, and the defendant's motion for summary judgment is denied.

The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to all counsel of record.

ENTER: This 12th day of April, 2005.

/s/ Glen E. Conrad
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CHARLES M. HUGHES,	)	
	)	
Plaintiff,	)	Civil Action No.: 7:04CV00450
	)	
v.	)	**ORDER**
	)	By: Hon. Glen E. Conrad
PRUDENTIAL LIFE INSURANCE COMPANY OF AMERICA,	)	United States District Judge
	)	
Defendant.	)	

This case is before the court on the parties' cross-motions for summary judgment. For the reasons stated in a Memorandum Opinion filed this day, it is hereby

ORDERED

that the plaintiff's motion for summary judgment is **GRANTED** and the defendant's motion for summary judgment is **DENIED**.

The Clerk is directed to strike the case from the active docket of the court, and to send a certified copy of this Order and the attached Memorandum Opinion to all counsel of record.

ENTER: This 12th day of April, 2005.

/s/ Glen E. Conrad
United States District Judge